

rejected under 35 U.S.C. § 103(a) as being unpatentable over Brandt *et al.* in view of U.S. Patent No. 6,263,350 to Wollrath *et al.*

Applicant requests reconsideration of the application in light of the attached exhibits A-E, accompanying declaration under 37 C.F.R. § 1.131 and the following remarks.

The enclosed declaration by the undersigned attorney and supporting exhibits, allege facts that establish that the Applicant conceived the invention prior to the reference date of Brandt, and that there was no break in diligence from the time of conception to: disclosing the invention to his employer; the employer disclosing it to patent counsel; patent counsel interviewing the inventor; and preparing a draft application – all of which occurred before September 24, 1998, the reference date of Brandt. There was further continuous diligence in reviewing, revising and filing the patent application thereafter. All of the continuous acts of diligence occurred within customary time periods. Accordingly, the invention was conceived before the reference date of Brandt and there was continuous diligence in constructive reduction to practice in filing the application. Therefore, Brandt is not valid prior art under § 102(e).

Each of the rejections of the pending claims is based on Brandt alone or in combination with other cited art. Brandt is not valid prior art, therefore, all the claims are allowable over the cited art.

The declaration under § 1.131 submitted herewith is for expediency in prosecuting certain aspects of the invention only, and is not an admission that Brandt would otherwise anticipate or render the pending claims obvious in combination with Bapat, Herz or Wollrath as stated by the Examiner. Applicant therefore reserves the right to provide arguments that distinguish the invention over the cited art at another time, if necessary.

All of the claims remaining in the application are now clearly allowable.
Favorable consideration and a Notice of Allowance are earnestly solicited.

Respectfully submitted,

DORSEY & WHITNEY LLP



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MWR:sj

Enclosures:

Postcard
Fee Transmittal Sheet (+ copy)
Declaration Under 37 C.F.R. § 1.131
Exhibits A, B, C, D and E

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